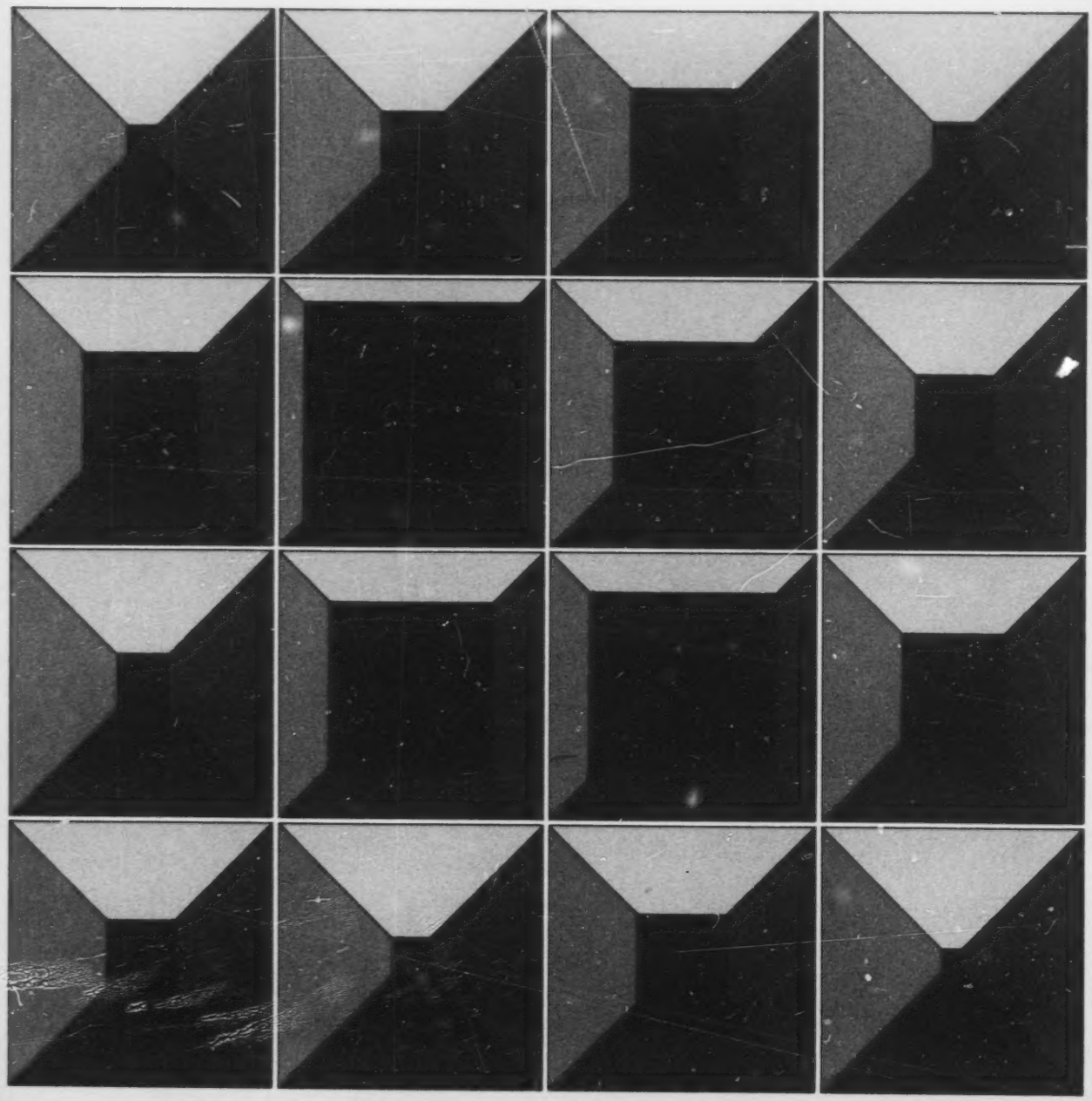
A CBO STUDY

Modifying the Davis-Bacon Act: Implications for the Labor Market and the Federal Budget

July 1983

Congress of the United States
Congressional Budget Office



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MODIFYING THE DAVIS-BACON ACT: IMPLICATIONS FOR THE LABOR MARKET AND THE FEDERAL BUDGET

The Congress of the United States
Congressional Budget Office

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PREFACE

The Davis-Bacon Act has been a subject of continuing controversy in the Congress. This paper, prepared at the request of the Subcommittee on Labor of the Senate Committee on Labor and Human Resources, describes the act and its effects on wages, federal construction costs, inflation, and employment. In addition, it examines options for modifying the Davis-Bacon Act and presents estimates of their impact on the federal budget.

This study was written by Steven H. Sheingold of the CBO's Human Resources and Community Development Division, under the direction of Nancy M. Gordon and Martin D. Levine. Many persons provided valuable technical and critical contributions, including Robert S. Goldfarb, Richard Hendrix, G. Brockwel Heylin, Michael O. Roush, James Schlicht, and Terry Yellig. Howard Levine provided computer assistance. Johanna Zacharias edited the manuscript. Jill Bury typed the several drafts and prepared the paper for publication.

In accordance with CBO's mandate to provide objective and impartial analysis, this paper contains no recommendations.

Alice M. Rivlin
Director

July 1983

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SUMMARY

The Davis-Bacon Act, passed during the Depression to protect the living standards of construction workers, has recently become a subject of heated legislative debate and court dispute. The principal charges against Davis-Bacon are that it causes construction workers on federal projects to be paid at needlessly high rates, raises construction costs in general, fuels inflation, and limits employment opportunities in the industry. Such criticisms have prompted various proposals to amend or repeal Davis-Bacon, that could reduce federal spending by up to $5 billion over the coming five years. Advocates of retaining the act, either intact or modified, cite benefits it confers--namely, protecting construction workers against wage cutting by contractors, adding a measure of stability to an inherently volatile labor market, fostering the recruitment and training of skilled labor, and assuring high building quality. Thus, an assessment of costs against benefits must underlie any possible legislative action on Davis-Bacon.

POINTS OF CONTENTION ABOUT DAVIS-BACON

The most controversial Davis-Bacon provision is the requirement that workers on projects covered by the act be paid the "prevailing wage" for a particular type of work in a particular locality. No definition of prevailing wages is provided either in Davis-Bacon itself or in the 58 other statutes that today also carry prevailing-wage requirements. Rather, the determination is left to the discretion of the Secretary of Labor, and is based on observation of practices in an area where a federal project is to be done.

What is specified, however, is that the prevailing-wage provision cover all construction contracts (including those for painting, decorating, and repairing, as well as actual building) valued at $2,000 or more. That threshold level, unchanged since 1935 despite substantial increases in construction costs in the intervening years, means that Davis-Bacon covers a range of federally funded or aided undertakings. Because federal involvement in the private market (in the form of grant monies, loans, and loan guarantees as well as direct federal projects) has become so extensive, a full one-fourth of all new construction, or $53 billion worth in 1981, is covered by Davis-Bacon or related provisions.

Two issues arise in considering possible changes to the Davis-Bacon Act:

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- What are the costs and benefits of minimum wages such as those required by the act? and

- Do current procedures for administering the act add unnecessarily to its costs?

The Costs and Benefits of Minimum Wages

Any minimum wage affects how a labor market functions, potentially both imposing costs and providing benefits.

Costs. Minimum wages under Davis-Bacon can raise construction costs in several ways. First, to whatever extent wages below the Davis-Bacon minimum exist in an area, the act raises wages on federal projects--and in turn, federal costs--by excluding lower-paying firms that might otherwise have won contracts. In addition, minimum wages interfere with a major function of market-determined wages--namely, signaling workers to seek employment where their efforts are valued most highly. Both these factors may reduce employment levels and shift employment in favor of higher-wage workers. Finally, by raising wage rates and costs, Davis-Bacon minimum wages may contribute to general inflation.

Benefits. The Davis-Bacon Act's benefits include protecting both the living standards of construction workers and the competitiveness of local construction firms bidding against transient contractors who might win federal contracts on the basis of lower-than-prevailing local wages. Government contracts are especially vulnerable to such practices, because they must be awarded to the lowest qualified bidder. Further, by excluding bids from contractors who would use lower-wage, less-skilled workers, Davis-Bacon may aid federal agencies in choosing contractors who will do high quality work. Finally, by helping to stabilize wage rates in the inherently volatile construction labor market, Davis-Bacon may aid the industry in recruiting and training workers, thereby helping to maintain the long-term supply of skilled labor.

Administrative Issues

The administration of Davis-Bacon raises several other questions. First, how should a "prevailing wage" be defined in markets where many wages are paid within any one labor classification? This is perhaps the most difficult question to answer, since the meaning of "prevailing" is unclear unless almost all of the group earn the same wage. Second, should the use of less-skilled labor such as helpers and trainees be restricted on federal projects? Third, to assure compliance with the act, how much payroll information should be required of contractors?

The procedures for administering Davis-Bacon are in a state of flux, because regulations published by the Department of Labor (DoL) in May 1982 have been challenged in the courts. At present, the prevailing wage for any one labor classification in a locality can be determined by DoL in several ways, depending on circumstances. If half or more of all workers in a classification are paid a single rate, that rate is taken as the prevailing wage. If no single rate for a majority of workers exists, the local average is used. Until June 1983, an intermediate step--the so-called "30 percent rule"--was applied; under this procedure, disputed in the courts and likely to continue to be argued in future proceedings, the prevailing wage was defined as whatever rate is paid to the largest proportion above 30 percent of the workers in a given classification and locality. Either the majority rule or the 30 percent rule may lead to union wages--which are generally the highest rates--being issued as prevailing in areas that are heavily unionized. When the average is used, on the other hand, some workers will normally be paid more than the prevailing wage and some less, but the rate itself may actually be paid to none of them.

The DoL's current procedures for defining classes of laborers and mechanics, which generally restrict the use of helpers (less-skilled workers who assist veteran "journeymen") and trainees on Davis-Bacon projects, are also controversial. Wage determinations are issued for helpers only under a number of restrictions, while lower wages for apprentices can only be paid when such workers participate in training programs approved by the DoL. The May 1982 regulations would have loosened many of these restrictions and allowed two helpers to be employed for every three journeymen. These changes were all disallowed by the District Court, but some were reinstated by the Court of Appeals. The latter ruling will likely lead to some expansion in the use of helpers on Davis-Bacon projects, but how much is uncertain.

To assure compliance, current administrative procedures require contractors to submit detailed weekly payroll information as well as statements of compliance. The new regulations would have eliminated the former but retained the latter. This provision was disallowed by both the District Court and the Court of Appeals.

EVIDENCE ON THE EFFECTS OF DAVIS-BACON

Available evidence suggests that the Davis-Bacon Act increases federal construction costs in three ways:

- **By raising wages on federal projects;**
- **By requiring labor to be used in a costly fashion; and**
- **By imposing reporting and paperwork requirements on contractors.**

The Congressional Budget Office (CBO) estimates that the total amount by which Davis-Bacon raises federal construction costs (the sum of these effects) is approximately 3.7 percent--equivalent to an increase of federal outlays of just over $1 billion during fiscal year 1982. Because of a number of problems in available data and method, however, this estimate should be taken as tentative. The act may also have other consequences, but data on these effects are highly inconclusive. It seems to have no measurable effect on the overall rate of inflation; it may increase formal skill training; but it may also somewhat restrict employment opportunities for workers in the construction industry.

Effects on Wages

Davis-Bacon probably raises wages on federal construction projects in two ways. First, it effectively excludes contractors who would have paid their workers wages below the prevailing rates determined by DoL. Second, current procedures for setting prevailing wages may result in determinations that are artificially high by, for example, favoring union wages over non-union rates, or using data from a different locality in which wages are higher. Recent evidence indicates, though, that current definitions of prevailing wage do not consistently favor union rates, but they do lead to Davis-Bacon wages that are above area averages. Evidence concerning "importation" of wage rates from one locality to another is inconclusive.

Derived by various techniques, estimates of the additional federal costs attributable to Davis-Bacon wage determinations have ranged from $75 million a year to nearly $1 billion. These estimates have been questioned, however, because of data limitations, and because the estimates generally translate wage increases directly into cost increases without accounting for such possible offsetting factors as higher productivity in some tasks. A DoL estimate of $570 million, which corrects for some of these problems, is the best available and serves as part of the CBO's estimate of the total effect.

Effects on the Use of Labor

Another large impact of Davis-Bacon on federal costs results from the act's effect on the use of labor. Because wage determinations for helper and trainee classifications are seldom issued, most employees on federal projects are currently paid journeymen's wages. The DoL estimates that, if unlimited substitution of helpers for journeymen (both craftsmen and laborers) had been permitted in fiscal year 1982, federal construction costs would have been $480 million lower in that year.

Effects on Compliance Costs

Compliance procedures attached to Davis-Bacon under the Copeland Anti-Kickback Act (also enacted during the Depression) increase federal construction costs slightly. The CBO estimates that the requirement for weekly payroll submissions cost $50 million in fiscal year 1982, mainly through its effect on smaller contractors who do not normally maintain full-time clerical staff.

OPTIONS FOR CHANGING THE DAVIS-BACON ACT

Options for altering the Davis-Bacon Act--all of which are reflected in proposals now pending before the 98th Congress--include:

- **Repealing the act outright;**
- **Increasing the current dollar threshold below which Davis-Bacon requirements would not apply;**
- **Including a specific definition of prevailing wage in the act;**
- **Allowing more use of helpers;**
- **Reducing required compliance activities; and**
- **Combining several of the above modifications.**

Adoption of any of these options but repeal would preserve the fundamental benefits the act was designed to offer while still saving varying amounts of federal outlays.

Repealing the Act

If the Congress decided that the benefits of Davis-Bacon do not justify the act's costs, it could repeal the act and amend the other statutes carrying prevailing-wage stipulations. Repeal would save just over $5 billion in federal outlays during the fiscal year 1984-1988 period. Since a large portion of current construction outlays represents spending under commitments made in past years, savings in the initial years would be relatively small. For example, fiscal year 1984 savings would be $420 million, compared to $1.4 billion in 1988 (as shown in the Summary Table).

The magnitude of any adverse effects that might follow from repeal would depend on several factors. Fluctuations in construction wages might

SUMMARY TABLE. PROJECTED FEDERAL SAVINGS FROM CHANGES TO THE DAVIS-BACON ACT, FISCAL YEARS 1984-1988 (In millions of dollars)

	1984	1985	1986	1987	1988	Cumulative 1984-1988
REPEAL DAVIS-BACON						
Outlays	420	900	1,175	1,305	1,400	5,195
RAISE THE DOLLAR VOLUME THRESHOLD						
$40,000 Level						
Outlays	15	35	45	50	50	190
$250,000 Level						
Outlays	75	165	215	235	255	940
DEFINE PREVAILING WAGE AS THE AREA AVERAGE						
Outlays	35	75	95	105	115	420
ALLOW EXPANDED USE OF HELPERS						
Unlimited Substitution of Helpers for Journeymen						
Outlays	180	390	510	565	605	2,250
Limit of Two Helpers Per Three Journeymen						
Outlays	135	290	380	425	450	1,685
REDUCE REQUIRED COMPLIANCE ACTIVITIES						
Outlays	20	40	55	60	65	240
ELIMINATE THE 30 PERCENT RULE, SET THRESHOLD AT $100,000, AND ALLOW UNLIMITED SUBSTITUTION OF HELPERS						
Outlays	205	435	570	635	680	2,530

SOURCE: Congressional Budget Office.

NOTE: Savings in individual years may not sum to five-year cumulative savings because of rounding. For detailed descriptions of the options, see Table 3, pp. 36-38.

increase slightly, depending on the strength of the overall economy, the stabilizing effect of market forces, and institutional arrangements such as collective bargaining. To the extent that this increased instability occurred, the earnings of some workers would be reduced, and the industry's efforts to maintain the supply of skilled labor might be somewhat hampered. Whether the quality of federal construction would decline is uncertain.

Reducing Coverage

Short of repeal, the Congress could narrow the coverage of Davis-Bacon by increasing the minimum-size contract to which the act applies. This could be done either by indexing the $2,000 threshold for both past and future increases in construction costs, or by raising it to an even higher level. The first approach--which implies a fiscal year 1984 threshold of $20,000 to $40,000, depending what index was used--would hold the value constant in inflation-adjusted terms. The second approach would further reduce the number of contracts to which the act applied while maintaining coverage for most federal construction dollars. A level of $250,000 for example, would eliminate more than 90 percent of all contracts--accounting for less than 20 percent of the federal expenditures for construction.

Savings from this approach would be small unless the threshold were raised substantially. Establishing a $40,000 threshold, for example, would reduce federal costs by $190 million during the 1984-1988 period; a $250,000 threshold would save $940 million over the same five years.

Changing the Definition of Prevailing Wage

The Congress could also amend Davis-Bacon to include a definition of prevailing wage. Legislating the definition of prevailing wage to be either the rate paid to at least 50 percent of all workers in a locality or the area average (in other words, eliminating the 30 percent rule) would have no effect on federal construction outlays if the recent regulatory change is upheld. If this change is disallowed by future court rulings, however, such legislation would affect about one-third of all wage determinations, reducing total wages on federal construction projects by between 1 percent and 2 percent. This impact, which would likely be concentrated in rural and small urban areas, would translate into cumulative outlay reductions of $560 million for the fiscal year 1984-1988 period.

If, instead, the Congress defined the prevailing wage as the average for an area--eliminating the majority rule as well--savings would be $420 million over the 1984-1988 period. This change would affect large urban areas as well as rural and small urban ones. Wages would rise, however,

wherever the area average was higher than the rates paid to a majority of workers. Since calculations under this approach would include all wages paid in an area, this change would suffice to preserve the act's initial function--protecting the living standards of communities--though it would at times imply that the "prevailing" wage was not in fact a rate actually received by any worker.

Allowing Expanded Use of Helpers

The DoL could issue wage determinations for categories of labor such as helpers. The Congress could allow unlimited use of helpers or could expand their use with some restriction--as in the recently proposed DoL regulations. The CBO estimates that cumulative savings would total $2.3 billion during the fiscal year 1984-1988 period if unlimited substitution were allowed, and $1.7 billion if a restriction of two helpers to every three journeymen were imposed. These savings would be reduced to the extent that the new DoL procedures--those allowed by the U.S. Court of Appeals--lead to an expanded use of helpers under current law.

Such an approach would have several other effects. For one, the strength of nonunion contractors in competing for federal projects would probably increase, since they are not restricted by labor contracts from substituting lower-wage helpers for craftsmen and laborers. In addition, the number of less-skilled workers employed on federal projects would probably rise, thereby possibly aiding minority workers attempting to enter the industry.

On the other hand, the number of workers receiving formal training would probably decline. Contractors who are now induced to provide DoL-approved apprenticeship programs as the only permissible way to pay lower wages would tend to substitute helpers and informal trainees for apprentices. To the extent that this occurred, the access of minority workers to skilled crafts might be reduced and the future supply of skilled labor limited.

Reducing the Amount of Required Compliance Activities

To reduce the costs of compliance procedures, the Congress could codify DoL's proposal to eliminate weekly payroll submissions unless they were explicitly requested by the contracting agency. This change could save some $240 million between fiscal years 1984 and 1988. Limiting paperwork requirements might also induce more small contractors--who in the past have claimed to be discouraged by the recordkeeping activities--to bid for federal projects. On the other hand, this approach would probably

also reduce contracting agencies' ability to detect noncompliance with the act.

Using a Combination of Options

The Congress might want to consider enacting a combination of the preceding options. For example, if Davis-Bacon were amended to raise the coverage threshold to $100,000, eliminate the 30 percent rule from the determinations of prevailing wage, and allow unlimited use of helpers (as proposed in S. 1172), federal outlays would decline substantially--by at least $2.5 billion for the fiscal year 1984-1988 period. (Savings would rise to $3.0 billion if the 30 percent rule were reinstated by the Court of Appeals.) Moreover, savings from this option would approach $1 billion a year after fiscal year 1988, even if the 30 percent rule were not reinstated.

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CHAPTER I. INTRODUCTION

The Davis-Bacon Act, which since 1931 has required payment of "prevailing wages" on federal construction projects, has recently become a subject of considerable legislative effort and court litigation. The major controversy over Davis-Bacon and the many other statutes that also now carry prevailing-wage provisions concerns whether the economic benefits of this requirement outweigh the costs it imposes. Critics of the act have become concerned that it may unnecessarily raise federal construction costs, fuel inflation, and adversely affect employment in the construction industry. Other issues concern how the act is administered, particularly, how prevailing wages--not specifically identified or formulated in the law itself--are determined.

In response to these concerns, several proposals have been advanced to modify or repeal Davis-Bacon. This year, the Congress is likely to consider legislation that would reduce the number of projects to which the Davis-Bacon Act applies or that would alter the way in which prevailing wages are determined.

PLAN OF THE PAPER

This study is intended to help the Congress assess these and other possible modifications of the Davis-Bacon Act. This first chapter outlines the objectives the act was originally designed to achieve and identifies the current concerns about it. To establish context for current deliberations, Chapter II briefly describes today's construction labor market, providing information on wages, employment and unemployment, and collective bargaining agreements. Chapter III considers the potential cost and benefit effects of Davis-Bacon, presenting available evidence where possible. Chapter IV analyses a broad range of legislative options concerning Davis-Bacon and estimates their effects on the federal budget.

THE AIMS AND SCOPE OF DAVIS-BACON

Enacted during the Great Depression, the Davis-Bacon Act was passed in response to the concerns of local contractors and construction workers, who complained that they could not compete for federal government jobs against itinerant contractors employing low-wage migrant labor. During the Depression, it was not uncommon for roving builders paying substandard

wages to low-skilled workers to enter a locality and underbid local firms for the federal contracts available. To safeguard against this practice and protect local firms' and workers' living standards--while also assuring high building quality--Davis-Bacon prohibited federal contracts from being awarded to firms not offering their personnel the local "prevailing wages."

Thus, every contract to which the federal government is party specifies the minimum wages to be paid to laborers and mechanics engaged in various kinds of work. The act applies to all federal construction contracts costing $2,000 or more and covers construction, alteration, or repair of public buildings or public works, including painting and decorating. It provides that the minimum wages stated in a contract be based on what the Secretary of Labor determines to be the prevailing wage for the corresponding classes of laborers and mechanics on other similar projects within the geographic boundary (most often, the county) in which the work is to be done. A 1964 amendment to the act requires that the Secretary specify prevailing hourly rates for fringe benefits as well as wages. Definitions of terms such as "prevailing," "corresponding classes of laborers and mechanics," "geographic boundaries," and "projects of similar character" are not specified in the law, however, and therefore they are left to the discretion of the Secretary.

Though the act itself applies only to construction work purchased directly by the federal government, prevailing wage provisions, incorporated into more than 58 other laws have been extended to most federally financed and federally assisted construction. 1/ These related laws cover construction in areas such as education, health, housing, and transportation, and they specify that Davis-Bacon shall apply to construction involving federal grants, loans, loan insurance, or loan guarantees. 2/ Because of the extensive involvement of the federal government in the U.S. economy, Davis-Bacon requirements cover a substantial portion of all new construction. In recent years, from 20 percent to 25 percent of all new construction undertaken each year--$53 billion in 1981--was publicly financed and therefore was potentially covered by Davis-Bacon. 3/

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1. See The Federal Register (April 29, 1983).

2. In addition, a number of states have their own prevailing wage statutes for the construction industry. Federally assisted state or local construction projects may be covered by both the state statute and the Davis-Bacon Act. When these prevailing wage determinations differ, the higher of the two is used.

3. The total value of new construction put in place in fiscal year 1981 was $238 billion. See U.S. Department of Commerce, Construction Review (September-October 1982).

THE ISSUES

Whatever Davis-Bacon legislation the Congress considers, two basic issues are likely to arise:

- What are the costs of minimum wage legislation such as Davis-Bacon, and how do they weigh against any benefits provided?
- Is Davis-Bacon being administered most efficiently--or do current procedures unnecessarily increase the act's costs?

This analysis distinguishes two types of costs that might be associated with Davis-Bacon. One is the actual federal dollars paid for a good or service, a cost that may be raised by Davis-Bacon; such costs are the more easily quantified. The second type is costs that occur if the act causes resources to be used in a less efficient manner than in an unregulated free-market setting. These are often called "economic" costs, and they are measured in terms of reduced productivity.

Cost and Benefit Effects of Minimum Wages

Legislation such as Davis-Bacon that requires the payment of minimum wages influences how the market works, potentially both imposing costs and yielding benefits. To the extent that minimum wages are binding, they may inflate wages--and therefore both costs and prices--and they may adversely affect employment. (When the market wage is above the legislated minimum, of course, the law is not binding and has no impact.) At the same time, minimum wage legislation may have effects beneficial to society, as do various other federal laws that affect market outcomes. Both the costs and benefits are difficult to quantify and to counterbalance.

Costs. In most cases, Davis-Bacon requirements--by reducing competition--raise wages and thus federal costs. To the extent that wages below the allowed minimum exist in local markets, the act raises the wages paid on federal projects above competitive levels; contractors who might have won federal contracts on the basis of the lower rates are precluded from doing so. If higher wages are associated with higher productivity, however, the resulting cost increase would be offset somewhat.

Minimum wages may also impose costs on society by changing the way resources are used in the economy. Market wages reflect the relative scarcity of labor among alternative uses--that is, they convey signals for workers to seek employment where their efforts will be valued most highly. Legislatively imposed minimums interfere with these signals, potentially leading to reduced employment levels, increased unemployment, and shifts

in employment in favor of higher-wage workers--such as union labor--who now face artificially slight competition from lower-wage workers. 4/

Finally, minimum wages may affect general price levels. If higher wages on federal projects were to affect wages in private construction or in other sectors of the economy, then general price levels might rise. Moreover, the effects of increased project costs on federal spending and the budget deficit might also contribute to inflationary pressures.

Benefits. Though the Depression circumstances and specific problems that motivated passage of Davis-Bacon are long since past, some conditions still exist in the construction industry that might encourage wage cutting. As is discussed in Chapter II, the construction industry is characterized by informal and short-lived relationships between firms and employees, wide fluctuations in demand, and high unemployment levels. Together with relatively easy market entry and exit by contractors, these factors combine to offer incentives to cut wages to win federal contracts. These points argue in favor of maintaining the protection offered by Davis-Bacon.

On the other hand, without Davis-Bacon, widespread reductions in communities' living standards would not likely result from government construction contracts because of a number of offsetting factors. For one, other federal legislation (such as the Fair Labor Standards Act and the National Labor Relations Act), collective bargaining agreements, and labor-management stabilization committees in the industry would moderate wage fluctuations to some degree. For another, government construction--when combined with private construction in local markets--should generally increase the demand for construction workers' services, thereby causing some upward pressure on wages. Finally, wage cutting would be limited somewhat if workers were to respond to falling wages on federal projects by withholding labor, preferring instead to remain unemployed while searching for jobs in higher-wage sectors. This outcome is particularly likely when this job hunting is subsidized by Unemployment Insurance. 5/

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4. As discussed in Chapter III, increasing wages on government projects may reduce overall construction employment. Further, minimum wages may create artificial wage differentials between markets, causing some workers to remain unemployed while waiting for jobs in relatively higher-wage markets, rather than take available employment in lower-wage markets.

5. See Congressional Budget Office, Dislocated Workers: Issues and Federal Options (July 1982), and Unemployment Insurance: Financial Condition and Options for Change (June 1983).

A second potential benefit is that the prevailing-wage criterion may help assure that the federal government does business with reliable firms that do high-quality work. A private investor has the freedom to accept a high bid if it promises better quality, employment terms, or reliability. Federal agencies, in contrast, must award contracts to the lowest bidder, unless the low bidding contractor is determined to be unqualified. 6/ Screening unqualified contractors is difficult for several reasons, however. For one, carefully researching the credentials of all contractors who submit bids for federal projects would require either a significant period of time, which could slow the contracting process, or increased funding for a larger staff of contract officers. Moreover, the process is complicated by the fact that contractors enter and exit the industry frequently and hence, may be hard to judge on the basis of past performance. Finally, the quality of the product is difficult to assess; defects may not appear for some time after work is completed. By providing a strong incentive for contractors to use highly skilled labor, minimum prevailing wages under Davis-Bacon might help to ensure quality construction. (A contractor who used less-skilled labor at a given wage would have higher costs and hence, would submit a higher bid than one who used more highly skilled labor at that rate.) Setting minimum wages may, however, be a costly way of achieving quality control; in most labor markets, factors other than skills determine wage levels. For example, union construction workers receive higher wages than nonunion workers (see Chapter II), though the two may be comparably skilled.

Stability in the construction industry is a third potential benefit from setting minimum wages, which may aid in the recruitment and training of skilled labor. In other sectors of the economy--in manufacturing, for example--wages tend to remain stable (or to increase in many cases) during downturns in the business cycle. One primary reason for this stability is that many skills in these industries are specific to particular firms. In such instances, individual employers must invest in hiring and training their work forces; this offers an incentive to maintain relationships with employees by providing wage stability through cyclical downturns and slack periods of demand for those firms' products. In the construction industry, however, employment relationships are generally short, lasting only for the duration of a project. Further, most skills are applicable to a variety of projects. As a result, contractors can choose from a pool of readily available skilled labor, rather than train their own work forces. Some, therefore, might choose to reduce short-run costs by cutting wages. Such practice by individual contractors may discourage workers from acquiring construction

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6. Determining whether contractors are qualified or unqualified is generally left to the discretion of the agency's contracting officer. This rating might depend on past performance both in terms of quality of work and labor practices.

skills, even though the best interests of the industry as a whole are served by maintaining a supply of skilled labor. To the extent that Davis-Bacon adds a degree of stability to wages, it may aid the industry by encouraging workers both to undertake training and to remain in construction trades--thereby lowering the costs of construction in the long run.

Administrative Issues

At least five questions have been raised regarding the administration of Davis-Bacon:

- What is the appropriate definition of "prevailing wages"?
- How can a prevailing wage be measured most accurately?
- For what labor classifications should prevailing wages be issued?
- How should contractors' compliance be assured? and
- What size of projects should the act cover?

Defining Prevailing Wages. Though the prevailing-wage concept has a potentially significant impact on the costs of Davis-Bacon, no generally accepted definition of the term exists. Various obstacles stand in the way of devising a widely acceptable definition. In many localities, for instance, wages of workers in a single craft or trade, rather than being uniform or at least clearly dominated by one rate, may range widely.

Many different concepts of prevailing could be used in administering Davis-Bacon. For one, in a given locality, a prevailing wage could mean a rate actually paid to the largest number of workers in one classification earning the same amount; this might but might not include a majority of the workers. Though such an approach would mirror actual rates paid to some workers, it could lead to a wage standard that would be substantially different from (either higher or lower than) the rate actually paid to many local workers. For example, union wages--often the highest in a local market--might be chosen as prevailing, even though more than half the workers earn less. Or it could mean the average for the locality--which would reflect the local wage structure, because all wages paid would be included in the calculation. Though this latter approach would often lead to less pronounced differences between the prevailing wage and other rates in the locality, it might also result in a wage standard not actually paid to any workers in the area. Nonetheless, many variations or combinations of these two approaches are possible.

Measuring the Prevailing Wage Accurately. A related issue is how the prevailing wage might be measured most accurately. Specifically, how should wage data be sampled to calculate the prevailing rates? One way of gathering information is to rely on the voluntary submission of wage information by contractors. Though this method does not require large administrative expenditures for staff, it might lead to biased wage samples and hence, to inaccurate wage determinations. Extensive field surveys of wages in localities, on the other hand, would produce more accurate information; but they mean large staff costs.

How to choose the appropriate geographic area for sampling wage data is another subsidiary issue. The intent of the act was for minimum wages to represent those prevailing "on projects of similar character to the contract work in the city, town, village, or civil subdivision of the State, in which the work is to be performed." 7/ In some localities, there may not be a sufficient amount of similar construction on which to base a prevailing rate determination. In such cases, should wages be sampled for similar construction in nearby areas or taken from other types of construction in the same area? The former method would result in "importing" wage rates--which might not be representative--from other localities. (In some localities, this would not present a problem, since limited labor availability would necessitate hiring workers from these other areas--at their customary wage rates--in any case.) The latter, on the other hand, though it would assure that local wage rates were paid, might lead to inaccurate prevailing-wage determinations; wages can vary as much among types of construction as among localities.

Determining What Labor Classifications the Act Covers. Whether wage determinations should be issued for lower-wage, less-skilled classifications of labor, or whether all workers should be paid "journeymen's" wages, regardless of skill levels, are another major area of controversy. In particular, should determinations be made routinely for classifications such as "helpers" (less-skilled members of a particular craft who assist journeymen--that is, experienced craftsmen--in their work) and trainees, or should they only be issued on a restricted basis--such as when it can be shown that a helper is not performing a journeyman's tasks? In many areas--particularly those in which unions are not prevalent--contractors make extensive use of helpers and informal trainees at wages substantially below those paid to journeymen. Issuing wage determinations for helper and trainee classifications in these areas therefore would reflect prevailing practice. Unlimited use of helpers on federal projects, on the other hand, might induce some contractors seeking to lower their bid prices either to hire helpers to perform skilled work or to classify journeymen as helpers. In addition, helpers

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7. 40 U.S. Code 276.

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might be used to substitute for construction laborers adversely affecting the employment opportunities of these workers. 8/

Assuring Compliance. The level of payroll reporting requirements needed to assure compliance with Davis-Bacon is another controversial issue. The Copeland Anti-Kickback Act of 1934 requires that contractors on federally funded or federally assisted constructed projects submit to the Department of Labor weekly statements of wages. The Secretary of Labor therefore has authority to promulgate regulations for implementing this requirement. Detailed payroll submissions--such as a weekly wage report for each worker on a Davis-Bacon project (as currently required)--probably increases the degree of compliance with the act but might well impose additional costs on some contractors. Less detailed requirements--such as a weekly statement of compliance--would cost less, but they might reduce the effectiveness of the act by making enforcement more difficult.

Project Size. A final issue concerns what size projects should be covered by Davis-Bacon. This question is important because the threshold size that implies coverage will, in turn, determine the number of projects covered. The act excludes from coverage contracts valued below $2,000, because they were thought too small to have an impact on a community's wage standards. In the half century since the act's passage, the $2,000 threshold level has remained unchanged, though construction costs have risen considerably. Today, however, small contracts of $40,000 or less, though numerous, account for less than 4 percent of all federal money spent on construction, and large contracts valued at $1 million or more, though few, account for nearly 63 percent of federal construction dollars (see Table 1). Raising the threshold level--possibly by some index of construction costs--would still exclude contracts that are relatively small. Such an approach might have some adverse consequences for workers on these projects, however, if loss of Davis-Bacon coverage led to wage reductions.

PROPOSED DAVIS-BACON LEGISLATION

In response to these issues, a number of bills have already been introduced in the 98th Congress. Most would repeal the act and remove its provisions from related statutes. One bill before the House of Representatives (H.R. 148), however, would limit the act's coverage by restricting it to

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8. Laborers form a distinct classification of labor, as opposed to helpers who are generally classified as part of another craft (for example, carpenters). Laborers provide much of the routine physical work on construction projects, such as erecting and dismantling scaffolding, loading and unloading materials, and clearing debris.

TABLE 1. DISTRIBUTION OF DAVIS-BACON CONTRACTS BY DOLLAR VALUES OF PROJECTS, OCTOBER 1981-JUNE 1982

Contract Sizes (In dollars)	Percent of all Contracts	Percent of Dollar Volume
To $40,000	52.2	3.7
$41,000 to $100,000	21.7	5.9
$101,000 to $250,000	12.6	8.5
$251,000 to $500,000	6.1	9.1
$501,000 to $1,000,000	3.5	10.1
$1,001,000 and Above	3.9	62.7
Total	100.0	100.0

SOURCE: Congressional Budget Office tabulations from the Federal Procurement Data File.

projects costing over $40,000 in 1983 dollars and adjusting this level for changes in the Consumer Price Index in future years. 9/ In addition, the bill would make the act applicable only to the wages of unskilled laborers and would exempt helpers, trainees, and apprentices. A Senate bill (S. 1172) would specify a definition of prevailing wage, ban the use of urban wage surveys for rural areas, recognize semi-skilled helper classifications, and restrict coverage to projects costing over $100,000. 10/ These bills embody just some of the several modifications of Davis-Bacon the 98th Congress may consider (see Chapter IV). In addition, the Administration proposed to make some of these changes through the regulatory process. One change defining prevailing wage has already been implemented, while others have been either partially or fully overturned by the courts.

9. The Federal Construction Costs Reduction Act of 1983 (H.R. 148) was introduced by Representative George Hansen.

10. S. 1172 was introduced by Senator Don Nickles.

CHAPTER II. THE CONSTRUCTION LABOR MARKET

The construction labor market in the United States is unique in several aspects that have a direct bearing on debates about the Davis-Bacon Act. This chapter focuses briefly on the nature and extent of unionization in the building trades, on the employment, wage, and earnings situation, and on skill training.

GENERAL CHARACTERISTICS

The construction industry accounts for significant shares of both the Gross National Product (GNP) and U.S. employment. Over the past decade, new construction put in place has averaged between 8 percent and 10 percent of GNP, and construction workers have, on average, accounted for 5 percent of total employment. Privately owned construction generally accounts for nearly three-fourths of total construction, and most construction work is performed on a contract basis--meaning that the product is built for the use of someone other than the builder.

The federal government classifies construction contractors into three major categories: general building contractors, heavy and highway contractors, and special trade contractors. General contractors engage primarily in the construction of residential, farm, industrial, commercial, and other buildings. Heavy and highway contractors engage in construction and repair of highways, bridges, tunnels, railroads, sewers, and flood-control projects. Special trade contractors provide such services as plumbing, carpentry, industrial machinery and equipment installation, and water-well drilling.

The industry is made up mostly of a large number of small, localized firms. According to the most recent census of construction firms, the average contractor had a payroll of nine employees, and about 60 percent of contract construction employees worked in firms employing fewer than 50 workers. 1/ In 1977, more than 90 percent of these firms performed contract work exclusively in their home states.

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1. See U.S. Department of Commerce, Bureau of the Census, 1977 Census of Construction Industries.

UNION AND NONUNION CONSTRUCTION

Though approximately one-third of all construction workers are members of unions--mostly organized along craft lines--the construction industry has a growing nonunion sector. The nonunion--or "open shop"--sector has expanded from its traditional domination of the residential construction market to encompass large amounts of commercial and industrial building as well. 2/ Recent estimates place the open shop share of contract construction at 60 percent.

The extent of unionization varies by type of construction, region, and occupation. General building contractors tend to be less unionized (about 25 percent of employment), compared to heavy and highway construction and special trade contractors (40 percent). With respect to region, the estimated population of employees in unions ranges from 15 percent in the South to 40 percent in the Northeast and West, and 45 percent in the North Central portion of the country. In addition, the degree of unionization differs among the skilled crafts. While more than half of electricians, plumbers, and cement masons were unionized in 1979, other crafts such as carpenters, painters, and brick masons were about 30 percent unionized.

Though the open shop contractors tend to be smaller than union contractors--that is, firms employing union members only--their numbers seem to be growing along with their share of the market. Of the largest 400 construction firms in terms of volume, 24 percent were open shops in 1982, compared with 13 percent in 1979, and 4 percent in 1969.

UNEMPLOYMENT, WAGES, AND EARNINGS

The construction labor market is characterized both by high levels of unemployment and by wages higher than is average for other sectors of the economy. The unemployment rate in construction typically exceeds that of every other major industry group, and it has often been double the national rate (see Figure 1). Wages, on the other hand, have been quite a bit higher,

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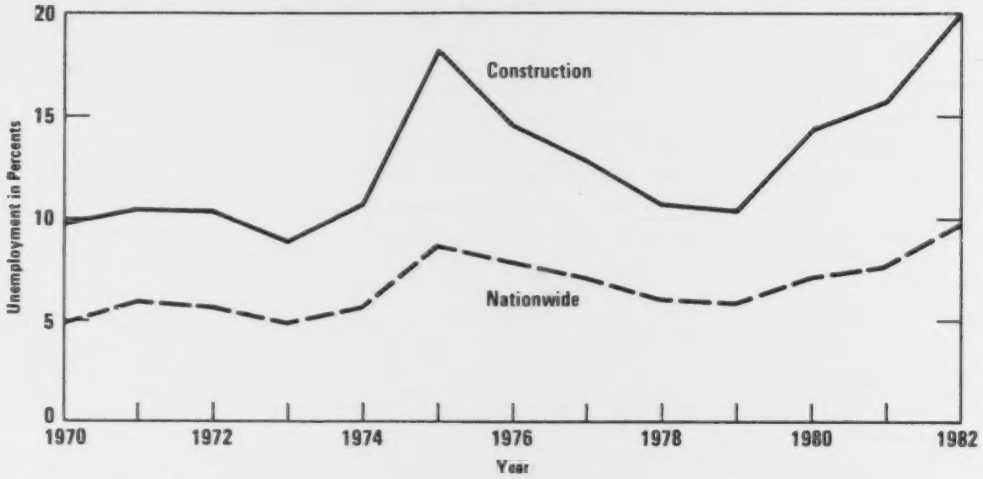
2. In the construction industry, the term "open shop" is commonly used interchangeably with nonunion. Throughout much of the rest of industry and organized labor, the term usually applies to a firm or other body in which some employees belong to a union while others do not; in such an open shop, most terms of employment are embodied in contracts that are negotiated by the union and management and that cover all personnel, regardless of membership or nonmembership. In the construction industry, mixes of union and nonunion workers are not common, and the term "open shop" therefore implies nonunionization.

on average, than in other major sectors of the economy, especially for the unionized construction sector. Inasmuch as high wages and high joblessness tend to offset one another, average annual earnings for construction workers are generally comparable to those of other workers.

Figure 1.

Unemployment in the Construction Industry and Nationwide: Fiscal Years 1970-1982



SOURCE: Congressional Budget Office from U.S. Department of Labor, Bureau of Labor Statistics, *Handbook of Labor Statistics* and *Employment and Earnings*.

Unemployment

Disproportionately high levels of unemployment in construction can be attributed to three basic factors: intermittent employment, cyclical sensitivity, and the seasonal nature of the industry.

The construction labor market is a fluid one, and employment is commonly intermittent. Construction workers are generally hired only for the duration of a particular project, and they therefore must shift from job to job and often from employer to employer--commonly with spells of unemployment between jobs. In 1979--a year of relatively low overall

unemployment--only about half of all construction workers were employed for the full year, compared with 70 percent of manufacturing workers. 3/

The cyclical sensitivity of the construction industry also accounts for high unemployment. Because buildings, factories, and homes entail large capital outlays, expenditures usually fall significantly when the level of economic activity declines. Thus, cyclical unemployment is more severe in construction than in other industries. During the October 1973-June 1975 recession, when joblessness nationwide increased by 4.0 percentage points, unemployment in the construction industry rose by 12.0 percentage points. A similar though less dramatic pattern was observed in the January-July 1980 recession. Between July 1981 and January 1983, the unemployment rate in construction rose by 6.8 percentage points, compared with 3.7 percentage points for the overall economy.

Finally, employment in the construction industry has a significant seasonal component. One study found that about 38 percent of construction unemployment could be attributed to seasonal factors. 4/ In many sections of the country, building activity falls off sharply during the winter months and rises again in the summer. From July 1978 through March 1979, for example, construction employment fell by 14.5 percent, compared to 0.1 percent for all industries. Through the spring and summer of 1979, however, construction employment rose by nearly 19 percent, compared with 3.5 percent for all industries. 5/

Wages

Historically, wages in construction have been higher than in most other industries, especially for unionized workers. In 1970, hourly earnings in construction were 56 percent higher than in manufacturing and 62 percent higher than in all private industry in the aggregate. These differentials have narrowed, however, to 37 percent and 50 percent in 1980.

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3. Tabulations from the March 1980 Current Population Survey. Full-year workers were those employed for 50 weeks to 52 weeks. This pattern changes little even if a slightly shorter period is considered--58 percent of construction workers were employed for 48 weeks or more, compared with 76 percent of manufacturing workers.

4. See Employment and Training Report of the President, 1976, p. 62.

5. See John Tschetter and John Lukasiewicz, "Employment Changes in Construction: Secular, Cyclical, and Seasonal," Monthly Labor Review (March 1983), pp. 11-17.

Within the construction industry, the most striking wage differentials are between the union and nonunion sectors. In May 1979, union construction workers were paid an average of $9.40 per hour, compared to $6.20 for nonunion workers--the latter being close to the average manufacturing wage of $6.70. Moreover, estimates of union wage premiums for the construction crafts (adjusted for factors such as geographic location, workers' education, size of firm, and type of construction) have ranged from 30 percent to over 60 percent. The Congressional Budget Office (CBO) estimates that total hourly compensation--including fringe benefits--is 54 percent higher for union members than for nonmembers.

Wage rates in construction also vary by region, by urban and rural character, and by occupation. On average, wage rates tend to be highest in the West and North Central regions and lowest in the South. They also tend to be considerably higher in urban areas than in rural areas. Finally, large differentials distinguish the various occupations--particularly among different skill levels. For example, craftsmen, such as carpenters and electricians, earn from 35 percent to 90 percent more per hour than do laborers. The following data on hourly wages, from the May 1979 Current Population Survey, summarizes these variations:

	Average Wage (in dollars)
REGION	
Northeast	7.44
North Central	8.11
West	8.40
South	6.21
URBAN VERSUS RURAL	
In Standard Metropolitan Statistical Area (Urban)	7.80
Not in Standard Metropolitan Statistical Area (Rural)	6.28
TRADE AND CLASSIFICATION	
Carpenter	7.52
Electrician	10.16
Plumber	8.77
Brick Mason	7.55
Painter	6.03
Laborer	4.80
Truck Driver	5.99

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Annual Earnings

Though hourly wages for construction workers are high relative to those of workers in other sectors, annual earnings are nearly the same (or even lower) because of intermittent employment and often long periods of joblessness in the construction industry. In 1981, average annual earnings in construction were $16,800 for unionized workers and $14,100 for nonunion workers, compared with $16,700 for manufacturing workers and $13,400 for all other private-sector workers together. Among workers who were employed for comparable numbers of weeks in 1981, however, construction workers' annual salaries were higher than those of workers in all other categories except for the group who worked 50 to 52 weeks (see Table 2). One explanation why earnings in this category were the same in construction as in manufacturing is that many construction workers who worked a full year were relatively low-paid laborers and clerical personnel. In addition, many union workers employed for 50 to 52 weeks may work fewer hours each week than does the average manufacturing employee.

TABLE 2. AVERAGE ANNUAL EARNINGS BY MAJOR LABOR SECTOR AND NUMBERS OF WEEKS WORKED PER YEAR, 1981

Numbers of Weeks of Work	Construction		Manufacturing	Other Private Wage and Salary Workers
	Nonunion	Union		
20 - 29	6,670	9,270	6,290	4,380
30 - 39	10,060	13,300	8,950	6,700
40 - 49	12,830	18,790	12,970	9,330
50 - 52	19,160	19,690	19,550	16,740
Weighted Average for All Workers	14,125	16,820	16,690	13,390

SOURCE: Congressional Budget Office based on earnings tabulations from March 1982 Current Population Survey.

NOTE: Union status for construction workers was imputed on the March sample by using information from the May 1979 CPS.

SKILLS AND TRAINING

There are significant differences between the union and nonunion sectors with regard to how different types of labor are used on construction projects. In addition, methods of training workers vary considerably between these sectors.

Skill Levels

In the union sector, how workers of different crafts and skill levels are used is determined by collective bargaining agreements. Virtually all such agreements specify that work be assigned along strict craft lines--that is, carpenters do carpentry and no other tasks. Moreover, these agreements generally specify formal skill ratios between journeymen and apprentices, so that substitution of less-skilled for more-skilled workers is limited. Finally, such agreements limit the extent that union firms can use semi-skilled workers to perform helpers' duties for journeymen in crafts such as carpentry, electrical work, plumbing, and bricklaying.

In the nonunion sector, on the other hand, work assignments are generally more flexible. Craftsmen usually perform various tasks--for example, carpenters might also do ironwork. Often, a category called "general building mechanic" is made up of workers who perform assorted chores. Nonunion contractors also make extensive use of semi-skilled helpers or on-the-job trainees to perform routine tasks.

Training

Most construction skills are learned through industry training programs. Formal training--usually by apprenticeship--includes learning a specified sequence of subjects through on-the-job experience and classroom training. In contrast, informal training occurs as skills are learned through the performance of tasks in the production process. Such informal training has no fixed guidelines and may occur in a number of ways, including observing or learning by doing; but generally, it does not involve classroom instruction. Although a majority of craft workers learned their skills through the latter process, many persons have concluded that informal training has limitations, because it tends to produce workers with narrow ranges of competence, rather than a well-rounded journeymen who can perform a wide range of tasks relevant to the particular craft.

Formal training programs are more prevalent in the union sector than in open shops. Rules for apprenticeship programs in the union sector are promulgated jointly by unions and management, and programs are financed

by areawide funds to which employers contribute in proportion to their hours of work by employees in the craft. Some large, nonunion contractors have also established their own programs, while others are run by contractors' associations, but 85 percent of all apprentices in programs approved by the Department of Labor's Bureau of Apprenticeship and Training were in union programs in 1979. The Business Roundtable's Construction Industry Cost Effectiveness Project recently estimated that fewer than 10 percent of persons completing craft training programs were in the nonunion sector, though this sector now performs 60 percent of all construction work. 6/

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6. See Bureau of National Affairs, Daily Labor Report (December 3, 1982), pp. A-2 to A-3.

CHAPTER III. EFFECTS OF DAVIS-BACON ON FEDERAL CONSTRUCTION COSTS AND ON THE ECONOMY

The Davis-Bacon Act has been criticized as imposing costs in excess of its benefits. In particular, procedures used to determine prevailing wages and the act's associated administrative requirements potentially drive up federal construction costs. To the extent that this occurs, Davis-Bacon may also cause increases in general price levels. Thus, critics also point to more general adverse effects, charging that Davis-Bacon may reduce the overall level of construction employment and may particularly limit employment opportunities in the open-shop (nonunion) sector.

This chapter first describes procedures used to administer the act and then examines the act's effects on federal construction costs, inflation, and employment. Because substantially less quantitative evidence exists for the latter two aspects, the analysis emphasizes effects on federal costs.

ADMINISTRATIVE PROCEDURES FOR DAVIS-BACON

The Davis-Bacon Act is administered both by whatever federal agency is contracting to have work done and by the Department of Labor (DoL). The responsibility of the former is to determine whether Davis-Bacon applies to a particular project and to monitor compliance for those projects. After defining which classes of laborers and mechanics the act covers, in addition to what geographic area and other similar construction work to consider, DoL determines the local prevailing wages.

In fact, DoL issues two types of wage determinations: for areas and for specific projects. In setting both, DoL considers information from statements submitted by contractors, collective bargaining agreements, wage determinations by state and local agencies, and the department's own wage surveys. Area wage determinations, published in the Federal Register, reflect rates determined to be prevailing in the major construction categories used (see Chapter II) for specific geographic areas. Such determinations--which remain in effect until superceded or modified by new determinations or withdrawn--are issued in markets in which wage patterns are stable and a large volume of construction is under way or recently completed. For projects outside these areas, decisions for specific projects are issued at the request of the contracting agency; these remain in effect for 120 days. In 1982, the DoL issued 1,238 area and 12,788 project determinations.

Because of the publication of new DoL regulations--and subsequent litigation--the status of many current procedures for issuing wage determinations is uncertain. In May 1982, the DoL published final regulations that would have substantially changed many procedures for defining prevailing wages, geographic areas, and classes of laborers and mechanics, and that would have modified compliance procedures. All but one regulation--the one that would have redefined prevailing wages--were disallowed in a recent U.S. District Court decision. The U.S. Court of Appeals partially reversed this decision, allowing the proposed changes in defining geographic areas and partially allowing the proposed changes for defining labor classifications. 1/ Until June 28, if there was no majority paid at an identical rate, the wage paid to at least 30 percent of workers was used. The May 1982 regulations eliminated this step--often called the "30 percent rule." The current definition of prevailing wage in effect is the wage rate paid to a majority of workers in a particular classification of work on similar construction in a locality. If no uniform rate is paid to at least half the of workers in a given classification, the average of all wages is used. (The results of the several methods for determining prevailing wages are illustrated in the box opposite.)

Current DoL procedures for defining classes of laborers and mechanics generally restrict the use of helpers and trainees on Davis-Bacon projects, although new regulations would expand these workers' use. The DoL issues prevailing wages for a number of crafts, and for laborers, but seldom for helpers in these crafts; thus, in most cases, all workers in a particular craft must be paid journeyman's wages. A helper classification has occassionally been recognized if it constitutes a separate and distinct class of workers, if the particular helper classification prevails in the area, or if the helper is not used as an unofficial apprentice or trainee. Also, a lower wage for apprentices is issued for participants registered in training programs approved by DoL's Bureau of Apprenticeship and Training. These requirements are intended to ensure that apprentices and trainees actually receive training and are not used to avoid Davis-Bacon requirements. As a result of the Court of Appeals ruling, DoL will likely issue new regulations that will allow for a somewhat expanded use of helpers on Davis-Bacon projects. 2/

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1. See Bureau of National Affairs, Daily Labor Report (December 27, 1982), pp. A-9 through A-10 and (July 6, 1983), pp. A-12 through A-14.

2. The May 1982 regulation would have loosened the restrictions on the helper classification in two ways; the definition of helpers was expanded so they need not perform separate and distinct tasks from those of journeymen, and the helper classification need only have been an "identifiable" class of labor rather than one that "prevails" in the area. The District Court disallowed both these changes. The Court of

EXAMPLE. POSSIBLE PREVAILING WAGE DETERMINATIONS UNDER DIFFERENT LOCAL LABOR CONDITIONS

This illustration, of a hypothetical locality and worker classification (possibly carpenters), depicts how prevailing wage determinations can vary depending on the distribution of the work force among hourly rate levels.

Case 1		Case 2		Case 3	
Percent of Workers	Hourly Wage	Percent of Workers	Hourly Wage	Percent of Workers	Hourly Wage
75	$8.00	25	$8.00	48	$8.00
25	10.00	25	8.01	27	9.00
		25	8.02	25	10.00
		25	10.00		

Prevailing Wage	Prevailing Wage	Prevailing Wage	
		(old)	(new)
$8.00	$8.51	$8.00	$8.77

In Case 1, a clear majority of 75 percent earning precisely $8.00 an hour produces a prevailing wage of $8.00--$2 less than 25 percent earn. In Case 2, though the same three-fourths earn rates that differ by only pennies from each other's and from workers earning $8 in Case 1, the prevailing wage determination is influenced upward to $8.51 by the 25 percent earning the $10 hourly rate; this is because the three-fourths earning $8.00, $8.01, and $8.02 are prevented by these tiny differences from being considered a majority. Finally, in Case 3, if the old 30-percent rule were still in force, the $8.00 rate would be considered to prevail as the one rate paid to more than 30 percent of all workers; now, however, an areawide average of $8.77 would be considered the prevailing rate.

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2. Continued.
Appeals allowed the expanded definition of helpers but disallowed the change from a prevailing class of labor to an identifiable one. The regulation also provided that no more than two helpers should be used for every three journeymen on a Davis-Bacon project.

To satisfy the requirement of the Copeland Anti-Kickback Act--which makes it a federal crime for contractors to induce kickbacks from workers--current DoL regulations also require Davis-Bacon contractors to submit weekly payroll and compliance information. The information may be submitted in any form in which the contracting firm keeps records. In addition, a weekly statement of compliance with the act is required from the contractor. The new regulations would have eliminated the weekly payroll submissions but maintained the statement of compliance. These changes were disallowed by both the District Court and the Court of Appeals.

EFFECTS OF THE ACT ON FEDERAL CONSTRUCTION COSTS

The Davis-Bacon Act and how it is administered might raise federal construction costs in three ways:

- By raising wages on federally funded and federally assisted construction above competitive rates;
- By requiring labor to be used in a more costly manner--in particular, impeding use of semi-skilled helpers; and
- By requiring submission of weekly payroll records by federal contractors.

Though any of the above might lead to cost increases for certain aspects of a construction project--such as wage and benefit payments--they do not necessarily raise total project costs proportionately because of possible offsetting factors. Increased wages might be partly offset if, for example, they led to increased productivity by attracting more highly skilled workers. (Evidence on the extent to which this occurs is inconclusive--see Appendix.)

Though the total impact of the Davis-Bacon Act on federal construction costs is difficult to assess, the CBO estimates that it might raise costs by approximately 3.7 percent--equivalent to an increase in federal construction outlays of about $1 billion during fiscal year 1982. As is discussed below, however, some of the data for calculating this impact are limited, so the estimate should be regarded as uncertain.

The Effects of Davis-Bacon on Wages

Davis-Bacon might raise wages on federal construction projects above competitive rates in two basic ways. For one, as discussed in Chapter I, imposing any minimum wage will, in many cases, increase wage rates above those that would occur without the law, because some contractors would

otherwise pay wages below the minimum rate. (Of course, in cases in which Davis-Bacon sets minimum wages that are lower than would otherwise have been paid, the act does not have this effect.) In addition, procedures used to administer the act might raise wages further, either by favoring union wages, by basing wages on dissimilar--or more complicated--types of construction, or by issuing wages based on a different higher-wage locality.

Prevailing Wages and Union Rates. Because union wages in construction are substantially higher than those paid in the nonunion sector, the current definition of prevailing wages potentially raises wages paid on federal construction projects above competitive levels, especially when nonunion rates are prevalent in a locality. Though some of the DoL's administrative procedures--in conjunction with the definition of "prevailing"--may favor union scales in some cases, the evidence suggests there is no consistent bias toward union rates. It does suggest, however, that current administrative procedures raise wages on federal projects somewhat above average area rates.

Several DoL procedures could potentially favor union rates in some localities. Because several thousand wage determinations are required each year, DoL cannot undertake a field survey for each area. Instead, the department often relies on the voluntary submission of wage data by contractors and other interested parties. This method may cause union wages to be overrepresented; union contractors have ready access to such information, which is contained in collective bargaining agreements, but nonunion contractors may have difficulty compiling payroll information. In addition, union workers receive uniform wages--specified by contract--while nonunion rates tend to vary considerably. For both reasons, either the majority rule or the 30 percent rule (if it were reinstated) might favor union rates--since wages that vary by as little as 1 cent are considered not identical (see boxed example). Moreover, many area determinations are based on collective bargaining agreements rather than on surveys, because union rates have traditionally prevailed. One study of 530 wage determinations in effect in October 1976 found that surveys were not made for 302, or 57 percent, of them. 3/ In all areas not surveyed, determinations were based on collective bargaining agreements.

Despite these factors, recent evidence indicates that the DoL's wage determinations do not necessarily favor union scales. Rather, it shows that union rates tend to be issued for geographic areas and types of construction that are relatively heavily unionized, and that nonunion rates are used in areas where the nonunion construction work is dominant. In a 1976 survey

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3. See General Accounting Office, The Davis-Bacon Act Should be Repealed (April 27, 1979).

of contractors in eight metropolitan areas, nearly all Davis-Bacon determinations in commercial construction were found to reflect union rates, but determinations in residential construction more closely reflected the amount of open shop activity in the localities. 4/ An internal review of federal housing program wages by the Department of Housing and Urban Development found that 77 percent were open-shop rates--even in areas with high proportions of union workers. 5/ In addition, a DoL review of wage determinations in effect in March 1981 showed that Davis-Bacon rates were not based on union scales in a majority of localities. In residential construction, union wages were used in 14 percent of all localities, while in commercial, heavy, and highway construction--all of which are more heavily unionized than residential construction--union rates prevailed in about half the localities. 6/ Finally, DoL found that, of a sample of wage determinations in effect for April 1981, 30 percent resulted from applying the 30 percent rule, while 28 percent were based on a majority rule, and 42 percent on area averages. Overall, these determinations--including those that used collective bargaining agreements rather than wage surveys--were generally consistent with patterns of unionization by geographic area and type of construction.

On the other hand, though wage determinations are not biased toward union scales, overall they are above the average rates in the localities. A DoL study of the April 1981 wage determinations found that if average wages were used in all localities in which either the majority rule or 30 percent rule had been used, wages on federal projects would have been reduced by between 1 percent and 2 percent. 7/

Similarity of Projects. Available evidence suggests that wage determinations are often based on dissimilar projects, and that they are higher than they should be as a result. In each of DoL's wage categories--residen-

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4. For example, in two cities with little open shop activity, union wages were chosen. In four cities with a large nonunion sector, however, Davis-Bacon rates were lower than the average open-shop rate. See Clinton Bourdon and Raymond Levitt, Union and Open-Shop Construction, Lexington Books (1980).

5. See Bourdon and Levitt, Union and Open-Shop Construction, p. 95.

6. Unpublished data provided by U.S. Department of Labor, Division of Contracts. Union rates prevailed in building (55 percent of localities), heavy (50 percent), and highway construction (47 percent).

7. See U.S. Department of Labor, Final Regulations, Impact and Regulatory Flexibility Analysis of Davis-Bacon Related Regulations (1982).

tial, commerical building, heavy construction, and highway construction--there may be many dissimilarities in local labor practices and wages owing to size, type, and complexity of construction. Though DoL procedures require that these dissimilarities be accounted for, a recent study by the General Accounting Office (GAO) found that "...many of the wage rates prescribed by (the Department of) Labor were not based on similar construction work." 8/ A number of cases have also been cited in which generally higher building rates have been applied to heavy construction. 9/ The same report contends that, though the legislative history of the act shows that rates should be based on similar nonfederal projects, DoL includes federally financed projects in surveys. This practice is likely to raise Davis-Bacon rates, and these errors tend to become self-perpetuating. The GAO estimated that, of 20 craft determinations studied, wages on 14 would have been 4 percent to 50 percent lower if data from federal projects had not been included. Six determinations, however, would have been 3 percent to 23 percent higher.

Geographic Areas. In some cases, Davis-Bacon determinations reflect wages from localities--usually defined by DoL as counties--other than the one in which the construction is actually to take place. Whether this raises prevailing wage determinations is uncertain. Particularly in rural areas, the volume of construction may be small and there are often no similar projects undertaken in the previous year. In these cases, DoL has used data from the geographically nearest similar project; this may result in using urban wage rates--which are generally higher--for rural areas. 10/ To whatever extent this is true, local contractors in rural areas might be discouraged from bidding on federal projects, because doing so would disrupt their normal wage practices. Indeed, a recent survey of rural construction found

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8. See General Accounting Office, The Davis-Bacon Act Should be Repealed, p. 50.

9. Examples are the Arlington County (Virginia) segment of Washington D.C. Metro and the Manned Space Center in Houston (Texas). See Martha Norby Fraundorf and others, "The Effects of the Davis-Bacon Act on Construction Costs in Non-Metropolitan Areas of the United States," reprinted in The Impact of the Davis-Bacon Threshold on Small Business Construction Contractors, Hearing before the U.S. Senate, Subcommittee on Government Procurement of the Committee on Small Business, February 2, 1982.

10. On average, urban rates in 1979 were 25 percent higher than wages in rural areas. See Table 1 in Chapter II. Under the Court of Appeals decision, however, DoL will likely issue new rules banning the use of urban wages for rural areas.

that 47 percent of private construction projects were built by local contractors, compared with only 28 percent on public construction projects. 11/ The fact that more than half of all private projects were built by contractors from other counties suggests, however, that local labor markets do encompass many counties. Moreover, 35 percent of private projects represented in that survey were built by urban contractors, suggesting that urban wage rates may be brought into some rural markets by forces other than Davis-Bacon.

Overall Effects on Construction Wages. Though there are many estimates of Davis-Bacon's overall impact on federal construction wages, a number of methodological problems limit these estimates' usefulness. The impact of using alternative prevailing wage definitions--which is only part of the potential effect the act has on wage rates--has also been estimated. The latter estimates suffer from fewer methodological problems and are used in Chapter IV for calculating the impact of various options.

The costs to the federal government attributable to Davis-Bacon's effects on wages have been estimated to range from $75 million to $1 billion a year (see Appendix). These costs reflect estimates of wage increases ranging from just under 2 percent to greater than 11 percent--depending on the occupations, localities, and types of construction studied. 12/ These impacts are then translated into federal construction cost increases by being applied to a measure either of the value of public construction or of actual federal budget outlays. For example, the DoL estimated that, in 1982, the difference between average wages on Davis-Bacon projects and on private projects was 5.3 percent in building construction and 5.4 percent in residential construction--implying a cost to the federal government of $568 million in 1982. 13/ This estimate--approximately the mid-point of the range of estimates--is used as part of the total cost impact (3.7 percent) given above.

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11. See Fraundorf, "The Effects of the Davis-Bacon Act."

12. A number of studies have attempted to estimate the wage impact of Davis-Bacon by several methods. For one, Davis-Bacon determinations have been compared to average wages obtained from Bureau of Labor Statistics (BLS) surveys. Another method, used by GAO, has been to compare Davis-Bacon rates with prevailing wages calculated from GAO's own survey. Finally, comparisons have been made between Davis-Bacon rates and those that would be issued under alternative definitons of prevailing wage.

13. For details on the DoL estimate, see U.S. Department of Labor, Final Regulatory Impact and Regulatory Flexibility Analysis on Davis-Bacon Related Regulations (1982).

Most of the studies have been criticized, however, for applying data for a limited number of crafts, localities, or types of construction to the universe of federal construction project. 14/ Critics point to the wide range of these estimates as evidence that this approach can be misleading. Moreover, all of the studies have been criticized for translating wage increases directly into cost increases, without accounting for productivity differences between workers at different wage levels, which might partially offset the higher wage costs. Unfortunately, data that could improve the estimates are not available.

The Effect of Davis-Bacon on the Use of Labor

Although the effect of Davis-Bacon on wages receives the most attention, the act's largest potential cost impact may derive from its effect on the use of labor. For one thing, DoL wage determinations require that, if an employee does the work of a particular craft, the wage paid should be for that craft even if the employee does not carry that job title. For example, carpentry work must be paid for at carpenters' wages, even if performed by a general laborer, helper, or member of another craft. In addition, as discussed above, the DoL generally has not issued wage determinations for helper and apprenticeship classifications, so some work that does not require a skilled craftsman has been paid at craftsman rates. 15/ Neither of these procedures reflects prevailing practice in much of the industry, and they both probably reduce flexibility and inflate costs.

In particular, these procedures may remove any cost advantage that nonunion contractors offer and may discourage them from bidding on federal contracts. As mentioned in Chapter II, nonunion contractors generally do not strictly follow traditional craft lines, but instead provide some training to workers in a number of trades and use them for various tasks that cross craft lines. In many firms, these workers are grouped in the separate classification, "general building mechanic." In cases in which DoL does not issue this classification, the workers must be paid a composite rate reflecting several crafts, weighted for how much time is spent on each task; this increases the nonunion contractors' costs for labor. In contrast, these requirements are likely to have little impact on the costs of union

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14. Although the $568 million estimate of the wage impact suffers from some of these problems, the DoL was able to correct for some of the sampling problems.

15. There will likely be a somewhat expanded issuance of helper classifications when DoL formulates new regulations pursuant to the recent Court of Appeals decision.

employers, since collective bargaining agreements (as discussed in Chapter II) usually specify similar restrictions on assignment of work by craft jurisdictions.

Moreover, open shop firms make much more extensive use of helpers than do union firms. Under most determinations, Davis-Bacon leaves these contractors the choice between paying helpers and trainees a journeyman's wage--thereby increasing costs--or attempting to establish training programs certified by Bureau of Apprenticeship and Training, which might provide training that was not fully compatible with the normal operation of the employer. 16/

A DoL regulatory impact analysis concluded that the current policies regarding semi-skilled workers--helpers, in particular--do not adequately reflect local practice and therefore raise project costs. The DoL estimated that allowing unlimited use of helpers on federal construction projects would have reduced costs by approximately $480 million in fiscal year 1982. If this substitution had been limited to a ratio of two helpers for every three journeymen--as proposed in changes to the DoL regulations--the saving would have been approximately $360 million in that year. 17/

Compliance Costs Under Davis-Bacon

Compliance with Davis-Bacon as currently required under the Copeland act may slightly increase the costs of federal construction. Submitting weekly payroll information--hours worked, wages, earnings, deductions, and net pay--for each employee working on a project covered under Davis-Bacon may impose costs on some contractors. These procedures probably have little impact on larger contractors who maintain full-time clerical staff, particularly as payroll records can be submitted in whatever form contractors choose. For smaller contractors who do not maintain such clerical personnel, however, weekly payroll reports might necessitate hiring additional staff, which would raise costs. The DoL has estimated that the costs

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16. See Levitt and Bourdon, Union and Open-Shop Construction.

17. These estimates have been criticized as too high because they assume that helpers can replace journeymen at a one-to-one rate. Though in some cases, one helper might accomplish less of a certain task than one journeyman could, a number of tasks probably do not require a journeyman's skills. Moreover, the DoL described a number of factors that might cause its estimates to be too low. To adjust for these opposing factors, the DoL produced a range of estimates (reflecting varying assumptions) and then chose the mid-point as its final estimate.

to federal contractors attributable to compliance requirements totalled $100 million in 1982. 18/ Because DoL assumed the same percentage cost for all contractors, and because small contractors account for only half of all contracts, the actual impact is probably about half that estimate.

Effects on Federal Construction

The overall impact of Davis-Bacon on federal construction costs is difficult to assess for several reasons. The total impact depends both on the cost effects discussed above and on the "economic" costs of the act--namely those costs attributable to diminished efficiency in the use of resources; these are difficult to quantify in terms of direct impact on federal spending. In addition, the magnitude of economic factors that might offset these costs--increased productivity, for example--is uncertain. Finally, a number of longer-term factors might be important. If, for example, Davis-Bacon has the effect of augmenting the total amount of skill training available--as proponents of the act claim--future construction costs could be reduced.

On the basis of the evidence available, the Congressional Budget Office estimates that Davis-Bacon increased the total costs of federal construction by about 3.7 percent, or just over $1 billion, in fiscal year 1982. Estimates of the three major cost factors--wages, labor use, and compliance costs--were added together to derive a total cost estimate. Of course, this estimate is too low to the extent that some costs cannot be quantified and too high to the extent that offsetting factors cannot be included. As stated above, DoL has estimated that, in 1982, the differential between average Davis-Bacon wages and average wages for all construction--a proxy for the wage impact of the act--lead to an increase in federal spending of $570 million, or 1.9 percent of federal construction costs. In its analysis, CBO used the DoL estimate of nearly $500 million, or 1.6 percent, in 1982, assuming there were no Davis-Bacon Act, unlimited substitution of lower-paid helpers for higher-paid journeymen and laborers would occur. Finally, the estimate of $50 million for compliance costs to small contractors--about 0.2 percent--was added to the other two estimates.

EFFECTS OF THE ACT ON THE ECONOMY

Though the debate over the cost aspects of Davis-Bacon receives the most attention, the act has several other potential economic effects. These

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18. This estimate was based on a 1972 contractors' survey that determined these costs to be 0.5 percent of construction costs. The DoL reduced this estimate by one-third to correct for overstatement.

include increased inflation, lower construction employment, and a different composition of construction employment, both between union and nonunion workers and between minorities and nonminorities.

The Effect on Inflation

If higher wages on federal projects spill over to private construction, the act might have a direct impact on construction prices. But this appears not to occur frequently. If wages on federal projects are higher than on other construction projects, private contractors might have to raise wages to maintain their work forces, particularly in areas with large amounts of government construction. This effect might be concentrated on nonunion contractors who do some federal construction--especially if Davis-Bacon rates are set higher than the wages these builders normally pay. Since some of their workers might be employed on private projects and some on Davis-Bacon projects, contractors might be pressed by employees to raise the wages of the private-project workers. A recent survey indicated, however, that open shop contractors handle this problem in various ways, including rotating workers to higher paying projects; and thus any wage spillover would apparently be limited to relatively few firms. 19/

Any increases in construction wages resulting from Davis-Bacon might also spread to other sectors of the economy, although evidence on this possibility is not conclusive. Many analysts believe that wages among key sectors of the economy are highly interdependent--that is, wage changes in any one sector depend on those in other sectors, because workers seek to maintain or improve their relative positions. (For example, wages in union sectors might affect nonunion wages, and wages in construction might affect those in manufacturing.) Thus, if Davis-Bacon were to cause a more rapid rise in construction wages, workers in other industries might press to receive similar increases. Although researchers have found evidence that such wage patterns exist in the economy, no direct link between construction wages in particular and those in other sectors has been established. 20/

Finally, Davis-Bacon may affect general price levels through any impact it has on federal spending, although this effect is likely to be quite

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19. See Bourdon and Levitt, Union and Open-Shop Construction.

20. See for example, Robert Flanagan, "Wage Interdependence in Unionized Labor Markets," Brookings Papers on Economic Activity, no. 3, Brookings Institution (1976), pp. 635-73; and Susan Vroman, "The Direction of Wage Spillovers in Manufacturing," Industrial and Labor Relations Review 36 (October 1982), pp. 102-112.

small. If higher wages led to increased federal spending, rather than to fewer projects, some impact on prices might occur through rising aggregate demand. But this would depend on the state of the economy, among other factors. Though some further inflationary effects might occur if the increased spending led to larger federal deficits, this link is uncertain. 21/

Employment Effects

By increasing costs, Davis-Bacon probably reduces employment on federally funded construction projects. Certain federal housing assistance programs, for example, provide a fixed level of dollars to aid in the construction of residential units. As a result, the number of units and quality of units, or both--and, hence, the number of construction workers--would decline with rising construction costs. In addition, if government demand for construction projects--and the attendant amount of employment--are sensitive to cost, then the amount of federally financed construction would decline as the cost per project rose. This might occur if, for example, next year's budget authority for a construction account were limited to some fixed percentage increase (unrelated to any rise in costs) over this year's account.

To the extent that Davis-Bacon discourages open shop participation in federal construction, it alters the mix of construction employment in favor of union workers. Open-shop contractors have claimed that they are reluctant to bid on federal contracts covered by Davis-Bacon because of the high wages, compliance costs, and especially the skill-use provisions. In one survey, 23 percent of open shop contractors reported that they believed that working on Davis-Bacon covered projects would be disruptive to their normal practices and therefore that they would not be likely to bid on federal contracts. 22/ In addition, 20 percent of open shop contractors who performed federal construction stated that they would not be interested in bidding on projects covered by Davis-Bacon again.

Finally, though the effect of Davis-Bacon on the employment and training of minority group workers is often debated, little evidence is available to evaluate this issue. To the extent that infrequent use of helper and trainee classifications on Davis-Bacon projects discourages the hiring of unskilled minority workers, these groups would receive less of the training and

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21. See Congressional Budget Office, Prospects for Economic Recovery, A Report to the Senate and House Committees on the Budget--Part I (February 1982).

22. See Fraundorf, "The Effects of the Davis-Bacon Act."

on-the-job experience that might lead to entry into skilled crafts. On the other hand, the skills necessary to achieve journeyman status might best be gained in bona fide apprenticeship programs such as those allowed under Davis-Bacon. If the Davis-Bacon requirement that approved training programs be provided to pay lower wages to trainees means that minority workers are more likely to become journeymen, minority workers' position is enhanced by the act.

CHAPTER IV. OPTIONS FOR CONGRESSIONAL ACTION ON THE DAVIS-BACON ACT

The Davis-Bacon Act might be changed in several ways that would permit reductions in federal outlays. The most extreme option, of course, is repeal; over the first five years after repeal, more than $5 billion might be saved. Of course, repeal would also mean elimination of any of the act's potential benefits. Other more moderate options, by decreasing Davis-Bacon coverage or changing the way the act is administered, could still reduce federal expenditures substantially while preserving most of the act's benefits. Of the six options considered in this chapter, five would retain the statute in some modified form:

- Repealing Davis-Bacon altogether;
- Raising the minimum threshold level below which Davis-Bacon does not apply;
- Including a specific definition of prevailing wage in the act;
- Allowing the expanded use of helpers on federal projects;
- Reducing required compliance activities; and
- Combining some or all of the above options.

Besides reducing federal outlays, each of these options would likely produce certain other effects in common, such as more competitive bidding for federal contracts.

To the extent that the productivity effects discussed in Chapter III are not accounted for, estimates presented in this chapter may overestimate the true savings from changes in Davis-Bacon. The estimates are based on the DoL's Final Regulatory Impact Analyses (FRIA), which--though superior to other estimates of the impact of Davis-Bacon in several ways--could not adjust for productivity differences between workers of different skill and wage levels because the necessary data do not exist. On the other hand, a number of other factors--which also could not be accounted for--might offset the effect of not including any productivity differences.

REPEAL OF DAVIS-BACON

The principal argument for repeal of Davis-Bacon is that the act's benefits--prevention of wage cutting in the construction industry, a measure of stability, and some assurance of building quality--do not justify its costs. Should this position determine the outcome of debate, repeal would imply not only recision of Davis-Bacon itself but also modification of the other 58 statutes in which prevailing-wage requirements are incorporated.

If repeal were effective at the start of fiscal year 1984, federal outlays would fall by an estimated $5.2 billion during the 1984-1988 period (see Table 3 later in this chapter). 1/ In the initial years, savings would be relatively small, since a large proportion of current construction outlays represents spending the federal government commited itself to in previous years. In 1984, savings would be $420 million, compared to $1.4 billion in 1988. Accordingly, savings would be even higher in future years. In addition to these federal budget reductions, repeal might yield such other benefits as more competitive bidding for federal contracts because of greater opportunities available to small local contractors.

The magnitude of any adverse effects of repeal--that is, loss of benefits--is uncertain. The extent to which fluctuation in construction wages would increase, potentially lowering the wages of construction workers and adversely affecting efforts to maintain the long-run supply of skilled labor, would depend on several factors. One determinant would be the degree to which both market forces and other institutions in the construction labor market (collective bargaining and labor/management stabilization committees, for example) dampened any downward wage pressures. The state of the economy in general would have a strong influence: while unemployment remains high, downward pressure on construction wages could be strong, but if unemployment should fall appreciably, the labor market would have greater resistance against this pressure. The effect on the quality of construction would depend on how well contracting agencies could determine contractors' qualifications without Davis-Bacon; as observed in Chapter I, this is often difficult. Such judgments might be even further complicated if repeal resulted in more numerous bids.

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1. The outlay reductions were estimated by applying the CBO's estimate of Davis-Bacon's total impact on federal construction costs--3.7 percent (see Chapter III)--to baseline projections of federal construction expenditures.

RAISING THE DOLLAR THRESHOLD LEVEL

The volume of construction covered under Davis-Bacon would diminish if the minimum dollar value of covered projects increased. One option is to raise the still-effective threshold of $2,000 to reflect past increases in the costs of construction and thereafter, to adjust it annually according to some predetermined cost index. According to different indexes, construction costs have increased from ten to twenty times since 1935, implying a new threshold between $20,000 and $40,000 in 1983. 2/ One reason for indexing the threshold level is to hold its value constant in real (that is, inflation-adjusted) terms. Since the original rationale for establishing a threshold was to exclude contracts considered too small to disrupt a community's wage structure or living standards, raising the threshold and indexing it periodically would continue the same relative definition of "small."

A second option would be to raise the threshold to an even higher level--for example, $100,000--with the effect of exempting a larger number of contracts. As a result, DoL and the contracting federal agencies would have fewer Davis-Bacon projects to administer, but most of the federal money spent on construction would still carry the Davis-Bacon provision. This is because so high a proportion of federal construction outlays is accounted for by a small number of large-volume contracts. For example, though almost three-quarters of all Davis-Bacon contracts on the Federal Procurement Data File for 1981 and the first two quarters of 1982 were valued at less than $100,000, they accounted for less than 10 percent of the total dollar value of all contracts (see Table 1 in Chapter I). In contrast, only 4 percent of contracts were for $1 million or more, but these accounted for more than 60 percent of all construction dollars spent.

Savings from this approach would be relatively small, unless the threshold were raised substantially. Cumulative savings from a $40,000 threshold--even if it were indexed annually--would be approximately $190 million for 1984 through 1988 (see Table 3). A $100,000 threshold would reduce outlays by $500 million over the same five years, and a $250,000 threshold would reduce five-year outlays by $940 million. These estimates are based on a cost reduction of 3.7 percent of construction costs--the total effect discussed in Chapter III--for those contracts that would no longer be covered by the act.

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2. The Department of Commerce Composite Cost Index shows the smaller increase, while the Engineering News Record Index the larger. The primary difference is that only the former adjusts for increased productivity over this period. The $2,000 threshold was established by an amendment to the act in 1935. The value was $5,000 in the original act.

TABLE 3. PROJECTED FEDERAL SAVINGS FROM CHANGES TO THE DAVIS-BACON ACT, FISCAL YEARS 1984-1988
(In millions of dollars)

	1984	1985	1986	1987	1988	Cumulative 1984-1988
REPEAL DAVIS-BACON						
Budget Authority	1,410	1,475	1,545	1,580	1,615	7,620
Outlays	420	900	1,175	1,305	1,400	5,195
RAISE THE DOLLAR VOLUME THRESHOLD						
$40,000 Level						
Budget Authority	50	55	55	60	60	280
Outlays	15	35	45	50	50	190
$100,000 Level						
Budget Authority	135	140	145	150	155	730
Outlays	40	85	115	125	135	500
$250,000 Level						
Budget Authority	255	265	280	285	290	1,375
Outlays	75	165	215	235	255	940
LEGISLATE THE DEFINITION OF PREVAILING WAGE						
Eliminate the 30 Percent Rule						
Savings relative to regulation in effect as of June 28, 1983						
Budget Authority	0	0	0	0	0	0
Outlays	0	0	0	0	0	0
Savings if the regulatory change is overturned						
Budget Authority	155	160	165	170	175	825
Outlays	45	95	125	140	150	560
Use the Average Wage in All Cases[a]						
Budget Authority	115	120	125	130	130	620
Outlays	35	75	95	105	115	420

(Continued)

TABLE 3. (Continued)

	1984	1985	1986	1987	1988	Cumulative 1984-1988
ALLOW EXPANDED USE OF HELPERS						
Unlimited Substitution of Helpers for Journeymen						
Budget Authority	610	635	665	685	700	3,295
Outlays	180	390	510	565	605	2,250
Limit of Two Helpers Per Three Journeymen						
Budget Authority	460	480	500	515	525	2,470
Outlays	135	290	380	425	450	1,685
REDUCE REQUIRED COMPLIANCE ACTIVITIES						
Budget Authority	65	65	70	70	75	350
Outlays	20	40	55	60	65	240
COMBINE SEVERAL OPTIONS[b]						
Eliminate the 30 Percent Rule, $100,000 Threshold, and Unlimited Substitution of Helpers[c]						
Budget Authority	685	715	750	770	785	3,710
Outlays	205	435	570	635	680	2,530
Average Wage, $250,000 Threshold, Unlimited Substitution of Helpers, and Reduced Compliance[d]						
Budget Authority	905	945	985	1,015	1,030	4,875
Outlays	270	575	750	835	895	3,325

(Continued)

SOURCE: Congressional Budget Office.

NOTE: Savings in individual years may not sum to five-year cumulative savings because of rounding.

See overleaf for footnotes.

TABLE 3. Footnotes.

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a. If the June 28 regulatory change is overturned by the U.S. Court of Appeals--the 30 percent rule is reinstated--cumulative savings for this option would be $1.4 billion and $985 million for budget authority and outlays respectively.

b. Savings from combinations of options would not equal the sum of the savings from the individual options because savings from changes in prevailing wage, use of helpers, and compliance requirements must be reduced to account for contracts that would no longer be covered by the increased threshold level.

c. Cumulative savings would be $4.5 billion and $3.0 billion, respectively, for budget authority and outlays if the 30 percent rule were reinstated.

d. Cumulative savings would be $5.5 billion and $3.8 billion, respectively, for budget authority and outlays if the 30 percent rule were reinstated.

With any of these specific threshold changes, savings would be distributed unevenly among major types of projects. Federal aid for highways--encompassing about one-third of federal construction outlays--would account for only 4 percent of the savings from applying a $100,000 threshold and 7 percent of the savings from applying a $250,000 threshold. On the other hand, construction grants made by the Environmental Protection Agency--about 8 percent of federal construction outlays--would account for 30 percent and 25 percent of the savings from these threshold levels. Military construction, which accounts for nearly 20 percent of construction outlays, would account for a proportionate amount of the savings, since the distribution of the Department of Defense's contracts is similar to that of federal construction in general.

In addition to these outlay reductions, further savings might occur if the diminished number of contracts led to more efficient administration of the act. For example, if DoL concentrated on the remaining large contracts--conducting more field wage surveys, in particular, so that wage determinations would be more accurate--the costs of those projects still covered might be reduced.

Raising the threshold also has potential drawbacks, however. Though the projects that would no longer be covered are probably not large enough to affect wages in a community as a whole, wages for workers on those projects might be reduced, as more contractors competed for federal construction contracts.

CHANGING THE DEFINITION OF PREVAILING WAGE

Davis-Bacon could be amended to include a specific definition of prevailing wage, which is now left to the discretion of the Secretary of Labor. In 1935, the Secretary promulgated regulations that set the definition of prevailing wages that was still used by DoL until June 28, 1983. The new definition eliminates the 30 percent rule, but since the rule may still be appealed in the courts and its elimination reversed, the Congress may wish to incorporate a definition of prevailing wage in the act. If the Congress decided to take such action, at least two approaches might be considered. For one, the current approach could be modified by defining the prevailing wage to be that paid to at least 50 percent of all workers, or if a majority were not paid at an identical rate, the area average. In effect, this would eliminate the 30 percent rule legislatively, in case the regulatory change is overturned. An alternative approach would be to define Davis-Bacon wages in every instance as the weighted average of rates paid in the area. Although an average wage definition differs from the current interpretation of "prevailing," it would provide a minimum wage standard consistent with the basic intent of the act--the protection of workers' living standards from opportunistic contractors who would use low-wage labor to win federal contracts.

Eliminate the 30 Percent Rule

Since the 30 percent rule was eliminated by regulatory change, legislating this definition of prevailing wage would have no additional effect on federal outlays--unless the regulatory changes were eventually overturned by the courts. The change itself, whether by regulation or legislation, would result in a small reduction in wages paid on Davis-Bacon projects. Since less than one-third of wage determinations in April 1981 were decided by the 30 percent rule, a majority of determinations would not be affected in either case. The DoL estimates that the overall effect of the regulatory change will be to reduce average wages on all federal construction by between 1 percent and 2 percent, with most of this impact occurring in rural and small urban areas. Such a change will, however, likely cause a small increase in wages for residential construction projects and for projects in areas--such as the South--where the national minimum wage was occasionally issued as prevailing for some unskilled workers under the 30 percent rule.

The savings from eliminating the 30 percent rule would be modest compared to past policies. On the basis of DoL's estimate, the impact on total construction costs--a reduction of 0.4 percent--the CBO estimates that cumulative savings for 1984 through 1988 would approach $600 million (see Table 3). In the initial years, savings would be relatively smaller because a large proportion of federal outlays for construction in a given year represents spending under prior commitments.

Since a number of interpretations of prevailing wage are possible when a high proportion of workers are not paid the same rate, the advantages and disadvantages to this approach are difficult to assess. Eliminating the 30 percent rule, for example, would avoid the possibility of paying higher wages on federal projects than on those paid to 70 percent of workers in the locality. On the other hand, it would lead to a more frequent use of the area average for prevailing wages (discussed below).

Define Prevailing Wage to be the Area Average in All Cases. If both the 30 percent rule and the majority rule were eliminated--and if the prevailing wage were defined to be a weighted average of local rates in all cases--savings would be considerably larger. Using the method described above, the CBO estimates that such a change would reduce federal expenditures by $420 million during the 1984-1988 period in addition to the savings achieved by eliminating the 30 percent rule. The impact of this change would be spread more evenly across rural and urban areas than would eliminating the 30 percent rule. Again, however, wages would rise for some crafts and localities in which the average exceeds the wage paid to a majority of workers. 3/

Though using the average wage in all cases would likely have several advantages, it would change the basic interpretation of prevailing wage. The average wage would represent local wage standards, since all wages would be included in its calculation, and it would provide ample protection from predatory wage cutting. It would, however, alter the longstanding interpretation of prevailing wage as the rate paid to the greatest number of workers in the area, moving instead to a wage standard that is artificial in that it may actually not be paid to any workers in the area.

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3. For example, during 1979-1980, 53 percent of painters performing residential construction work in four Michigan counties earned $6.00 per hour. The area average, however, was $6.89 per hour.

ALLOWING EXPANDED USE OF HELPERS AND TRAINEES

The Davis-Bacon Act could also be amended to recognize explicitly such labor categories as helpers and trainees. These categories are now recognized only in a limited number of wage determinations and under a number of restrictions--with the result that most workers on federal projects are paid journeymen's wages. The DoL's proposed May 1982 regulations would have changed this practice, providing wage determinations for helper classifications--with the restriction that not more than two helpers be used for every three journeymen employed. Should the Congress decide to amend Davis-Bacon to recognize this category of labor, it could either allow unlimited use of helpers or permit expanded use with some restriction, such as in the proposed regulation.

Either approach would likely produce a significant reduction in federal construction costs. Using the DoL's estimate of the reduction in total construction costs--1.6 percent--the CBO estimates that the cumulative savings from issuing wage determinations for helpers and allowing unlimited substitution of them for journeymen and laborers would be nearly $2.3 billion between 1984 and 1988 (see Table 3). 4/ If, instead, wage determinations for helpers were issued but a limit of two helpers to every three journeymen were imposed, the cumulative savings would total $1.7 billion over this period. 5/

Either change would probably increase the ability of nonunion contractors to win federal contracts, thereby encouraging more competitive bidding, which would lead to lower federal costs. Moreover, nonunion contractors would likely have some advantage in entering lower bids than they now do--even if Davis-Bacon rates were higher than those contractors usually pay--because they would be able to substitute lower-wage helpers

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4. The cost impact (presented in Chapter III) was based on the percent of employment that would be made up of helpers if the rule were in effect. The DoL estimated that there would be an additional 24,000 to 71,000 helpers on Davis-Bacon projects. To arrive at a range of cost savings between $260 million and $702 million, CBO multiplied the estimated wage differential between helpers on the one hand and laborers and journeymen on the other. The midpoint--$481 million--was chosen, which represents 1.6 percent of 1982 federal construction outlays.

5. As discussed in Chapter III, DoL will likely issue new regulations to allow for a somewhat expanded use of helpers on Davis-Bacon projects. To the extent that this occurs--which is uncertain at this time--these savings would be reduced.

for journeymen. Union contractors, in contrast, would usually be prevented from doing so by collective bargaining agreements. 6/

In addition to reducing federal outlays, this provision would likely increase the employment of less-skilled workers on federal projects, though it might also reduce the amount of training these workers would receive. Since contractors would be able to expand the number of workers paid at wages that are substantially below those paid to journeymen, they might be willing to hire--and possibly provide some training to--an increased number of low-skill workers, thereby perhaps aiding minority workers attempting to enter the industry. 7/

On the other hand, formal training and apprenticeship programs on federal projects might decline. Contractors who would have been induced to provide approved training and apprenticeship programs, because doing so was the only way of paying less than journeymen's wages on federal projects, might now reduce the number of apprentices in favor of helpers and informal trainees. To the extent that this adjustment occurred, less-skilled workers might receive less training of the type that would qualify them for entry into the skilled crafts--possibly reducing minority access to these crafts and limiting the supply of skilled labor in the future.

REDUCING THE AMOUNT OF REQUIRED COMPLIANCE ACTIVITIES

The Congress could amend Davis-Bacon to reduce the compliance procedures required under the Copeland Anti-Kickback Act. This could be done by codifying the DoL's proposed regulation that would have eliminated weekly payroll submissions unless they were explicitly requested by the contracting agency.

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6. Though there is no direct evidence that union contractors are less competitive because they have less flexibility in substituting lower-wage labor, certain recent union contract concessions that will allow contractors to use pre-apprentices for the first time tend to corroberate this argument. Pre-apprentices under these agreements will receive 30 percent of the journeymen's wage rate--compared to 40 percent for full apprentices. See Engineering News-Record, March 31, 1983, page 52.

7. The DoL found that helper wage rates were from 50 percent to 70 percent of journeymen's rates in particular crafts.

Such a change would likely produce some federal savings and possibly encourage smaller contractors to bid for federal projects. Using the estimated compliance cost impact presented in Chapter III--less than 0.2 percent of federal outlays for construction--cumulative savings would be $240 million for the 1984-1988 period. Moreover, an increased number of smaller contractors--who at times have claimed that bookkeeping costs discouraged them from bidding on Davis-Bacon contracts--might now be willing to undertake federal projects. An obvious drawback, however, might be increased noncompliance.

USING A COMBINATION OF OPTIONS

The Congress might also consider an approach combining features of the options outlined above. Such an approach could combine the federal savings from limiting the act's coverage by raising the dollar threshold with savings from the various administrative changes for those contracts still covered. The result would increase total savings while preserving the basic intent of Davis-Bacon for projects that account for the great majority of federal construction outlays. For example, if unlimited substitution of helpers for journeymen and laborers were allowed and the threshold level were increased to $100,000--such as proposed in S. 1172--cumulative outlay savings would be $2.5 billion for the 1984-1988 period. 8/ If, instead, the prevailing wage were always set at the area average, the threshold were set at $250,000, and weekly payroll submissions were eliminated, cumulative savings would be $3.3 billion for this period ($3.8 billion if the 30 percent rule were reinstated). 9/ Moreover, savings from both these options would likely approach $1 billion a year after 1988.

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8. Proposed by Senator Nickles, S. 1172 would also change the definition of prevailing wage by eliminating the 30 percent rule. Savings from this provision were not included in this estimate because it has already been implemented by regulation. If the regulation is overturned, cumulative savings would increase to $3.0 billion.

9. Savings from both combination options are somewhat less than the sum of savings from their individual provisions, since any outlay reduction attributable to contracts below the new threshold must be subtracted from the total.

APPENDIX

APPENDIX. ESTIMATES OF THE EFFECT OF DAVIS-BACON WAGE DETERMINATIONS

A number of research efforts have attempted to estimate the impact of Davis-Bacon wage determinations on federal construction costs. These studies have generally compared Davis-Bacon prevailing-wage determinations either with wage data obtained from Bureau of Labor Statistics (BLS) surveys or with information from their own surveys. This appendix briefly discusses these studies and the problems with their methodologies.

Two studies that used BLS wage surveys for comparison found that, depending on the craft and type of construction considered, Davis-Bacon may have increased wages between 2.9 percent and 11.1 percent above area averages. But several data problems limit the applicability of those estimates. One study, using a 1972 survey of construction wages for five crafts in 19 Standard Metropolitan Statistical Areas (SMSAs) found that Davis-Bacon raised wages 4.0 percent in commercial construction and 9.1 percent in residential construction.1/ The authors translated these estimates into a dollar cost of $430 million in 1972. A later study, by the Council of Economic Advisors (CEA)--using a 1976-1977 BLS survey of two crafts in 13 SMSAs--found that Davis-Bacon raised wages from 2.9 percent to 5.4 percent above the area averages for carpenters, and 5.0 percent to 11.1 percent for plumbers. The authors estimated the impact on federal construction costs to be between 5.6 percent and 11.0 percent, but they did not calculate dollar estimates.2/ All these cost effects should be interpreted with caution, however. Some studies had limited samples of crafts and localities, others excluded particular types of construction, and union workers were often overrepresented; thus the estimated wage impacts probably overstated the effect on all federal construction.

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1. See Robert S. Goldfarb and John Morrall III, "The Davis-Bacon Act: An Appraisal of Recent Studies," Industrial and Labor Relations Review 34 (January 1981), pp. 191-206. The authors calculate a range of $430 million to $960 million to reflect the 4.0 percent to 9.1 percent wage effect. Since residential construction constitutes a small part of federal construction (6.9 percent) the lower estimate is more applicable.

2. See U.S. Department of Labor, Final Regulatory Impact Analysis, 1982.

A study by the General Accounting Office (GAO) compared Davis-Bacon prevailing-wages to rates based on their own wage surveys and estimated that the federal cost of the act at $228 million in 1977. 3/ The GAO made its own survey of construction wages in 30 areas for which there were Davis-Bacon determinations. The survey generally followed the DoL procedures, except that it eliminated federal projects from the sample and duplicate counting of workers where contractors had worked on more than one project during the survey period. The study found that, of 277 worker classifications, DoL's rates in 98 classifications were higher by an average of $2.04 per hour, while 144 were lower by an average of $0.99 per hour. Moreover, GAO found that Davis-Bacon rates exceeded those from their own in 12 of the 30 localities, raising costs an average of 3.4 percent. The reliability of these estimates has been questioned, however, because of inadequate sample sizes, the choice of projects covering small volumes of construction, and the assumption that workers on the 12 projects for which the DoL's rates exceeded those calculated by GAO were always paid at the Davis-Bacon rate (the minimum) and not at a higher rate. 4/

Finally, a more extensive study, by DoL, of actual wage determinations and the rules used to calculate them estimated the impact of using various definitions of prevailing wages. 5/ The study used a sample of 1,170 craft determinations covering all major types of construction and all areas in which the Department's Employment Standards Administration conducts field surveys. To calculate savings, the determinations were classified by whether they were based on a majority's being paid the same rate, at least 30 percent being paid the same rate, or the area average. The study concluded that eliminating the 30 percent rule would have reduced federal construction costs by $120 million in fiscal year 1982, and that using the average wage definition would have reduced costs by $210 million.

Besides the methodological problems of these particular studies, questions have been raised regarding the general approach of translating wage increases directly into cost increases. These studies generally assume that if, for example, Davis-Bacon raised wages by 10 percent and labor costs constitute 30 percent of construction outlays, then the effect is to raise

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3. See General Accounting Office, The Davis-Bacon Act Should be Repealed.

4. As is evident from the remaining 18 determinations, contractors often pay wages higher than the minimum. Therefore, this assumption overstates the savings estimate, since it is based on the difference between GAO rates and Davis-Bacon (minimum) rates.

5. See U.S. Department of Labor, Final Regulatory Impact Analysis.

public construction costs by 3 percent. This approach may be incorrect, however, to the extent that workers at different wage levels may not be equally productive. If higher-wage workers are more productive than those at lower wages, an increase in wage rates would be offset to some extent by increased production. For example, hiring higher-wage workers might lead to less total worker hours on a project if those workers are more productive. Moreover, some persons contend that higher wages can be partially offset by their leading to better management practices--such as more attention to personnel selection and training and more careful onsite scheduling and maintenance.

Research into union-versus-nonunion productivity differences provides some evidence on offsetting effects, but again methodological problems probably limit that work's usefulness. Two studies have found that higher union wages in several industries were at least partially offset by higher productivity. 6/ Another study found that management reactions to unionization in the cement industry raised productivity in unionized plants above productivity in nonunion plants. 7/ Finally a recent study of the construction industry found that union workers were 38 percent more productive than nonunion workers--nearly offsetting the estimated 43 percent wage differential. 8/ Because of several criticisms of the methodology for this study, however, the results should probably be considered tentative. 9/

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6. See Charles Brown and James Medoff, "Trade Unions in the Production Process," Journal of Political Economy 86 (1978) and R. Freeman and J. Medoff, "Two Faces of Unionism," The Public Interest (1979).

7. See Kim B. Clark, "Unionization, Management Adjustment, and Productivity," National Bureau of Economic Research, Working Paper No. 332 (April 1979).

8. See Steven Allan, "Unionized Construction Workers Are More Productive," North Carolina State University (1979).

9. These criticisms are discussed in Bourdon and Levitt, Union and Open Shop Construction, and in Goldfarb and Morrall, "The Davis-Bacon Act: An Appraisal of Recent Studies."